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SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1952

No. 398

LOCAL 333B, UNITED MARINE DIVISION OF INTERNATIONAL LONGSHOREMEN'S ASSOCIATION (A.F.L.), ET AL.,

Petitioners,

vs.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF VIRGINIA FERRY CORP.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

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vs.

COMMONWEALTH OF VIRGINIA, AT THE RELATION OF VIRGINIA FERRY CORP.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in the above-entitled case on June 16, 1952.

Opinions Below

The judgment order of the Court of Law and Chancery of the City of Norfolk (R. 8-9) is unreported.

The opinion of the Supreme Court of Appeals of Virginia (R. 79-90) is reported in 193 Va. 773, 71 S. E. (2d) 159.

Jurisdiction

The judgment of the Supreme Court of Appeals of Virginia was entered on June 16, 1952 (R. 91). On September 8, 1952, Mr. Chief Justice Vinson extended the time for filing a petition for writ of certiorari to and including October 15, 1952 (R. 92). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

Questions Presented

1. Whether the provisions of the Virginia Public Utilities Labor Act, which prohibit strikes by employees of public utilities unless and until certain notices have been given and until the expiration of a five-week period following the final notice, conflict with the Labor-Management Relations Act, 1947.

2. Whether, if such conflict is clearly established by recent and authoritative decisions of this Court,[1] the state courts of Virginia may avoid the effect of such decisions and vitiate the federally-protected right to strike, by the issuance of a *permanent* injunction enforcing the Virginia statute and the punishment by fines and imprisonment of those who exercise their right to strike in violation of that injunction.

3. Whether state *court* action—the issuance of an injunction and punishment for contempt for violation of said injunction—can accomplish results forbidden by federal law to the state *legislature* and the state *executive*.

4. Whether the refusal of the court below to consider the validity of the Virginia Public Utilities Labor Act and the injunction issued thereunder on the appeal from a conviction of contempt for violating the injunction con-

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[1] *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; *Automobile Workers* v. *O'Brien*, 339 U.S. 454.

stitutes an adequate non-federal ground of decision and deprives this Court of jurisdiction to decide the important constitutional questions raised by petitioners.

Statute Involved

The statute of the State of Virginia, which petitioners contend is unconstitutional and invalid, is the Virginia Public Utilities Labor Act of 1947, Va. Code Ann. (1950), Title 40, § 75 et seq. In summary, the statute provides that strikes, lock-outs and work stoppages on public utilities shall be unlawful unless and until certain requirements laid down in the statute are fulfilled (§ 78). Whenever changes in wages or terms of employment are desired, the party requesting any such change must give notice to the opposing party and to the Governor and designate a time, not less than two nor more than sixty days thereafter, and a place for a conference with the opposing party (§ 78). In the event, after entering into negotiations in good faith, the parties are unable to agree, the Governor must be notified and another meeting must be held ten days from the time of adjournment of the first meeting (§ 78). The Governor may attend the second conference or send a representative or representatives to mediate the differences (§ 78). If at any time after the second meeting, one of the parties feels that further negotiations will be fruitless and is unwilling to continue the same, such party must notify the other party and the Governor to that effect (§ 78). Upon receipt of such a notice, the Governor shall request both parties to submit to arbitration (§ 78). If the parties are unwilling to arbitrate and one of them decides upon a work stoppage, he must fix the time for the beginning of the work stoppage, which must be not less than five weeks after the time of giving notice thereof.

and he must also immediately notify the Governor and the other party of such fact and of the time so fixed (§ 78).[2]

Violations of the statute are punishable by fine and by imprisonment up to twelve months (§ 91). In addition, civil penalties up to $10,000 per day may be assessed against labor organizations engaging in prohibited strikes (§ 92).

Statement

Petitioners are Local 333B, United Marine Division of International Longshoremen's Association (AFL), H. L. Everton, its President and W. L. Owens, its Secretary. The local union represents the employees of the Virginia Ferry Corporation (R. 79), which operates ferries in interstate commerce between Kiptopeke Beach and Little Creek, Virginia (R. 79).

On May 11th, representatives of the ferry corporation and of the local union met for the purpose of discussing their differences (R. 80). The union notified the corporation that it did not intend to comply with the Virginia Public Utilities Labor Act (R. 80). On May 17, 1951, the corporation filed its verified bill of complaint—a copy of which had been left at the office of the attorney for the union the evening before (R. 80)—in the Norfolk City Court reciting the union's intention not to comply with the Act and praying that the union and its officers be enjoined from calling a strike until it had complied with the provisions of the Virginia Public Utilities Labor Act (R. 15, 80). On the very same day, the court issued a *permanent* injunction prohibiting a strike "until proof is shown . . . either

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[2] In order to prevent any suspension of operations, the Governor is to utilize this five-week period to poll each employee as to his strike intention (§ 81) and to recruit and train the necessary replacements (§§ 82-83), so that he may seize and operate the utility at the end of this period (§79).

of compliance with the said Virginia Public Utilities Labor Act or of . . . intention to so comply therewith" (R. 15).

On May 31, 1951, the union removed the case to the United States District Court for the Eastern District of Virginia on the ground of the existence of a federal question (R. 2, 81).

On June 19, 1951, the union instituted a civil action in the United States District Court for the Eastern District of Virginia against John S. Battle, Governor of Virginia, to enjoin the Governor from enforcing the Virginia Public Utilities Labor Act, alleging, among other things, conflict with the Labor-Management Relations Act, 1947. See *Local 333B, United Marine Division* v. *Battle, Governor of Virginia,* 342 U. S. 880.

On June 22, 1951, the employees of the ferry corporation struck (R. 3, 81) without waiting for the five-week period required by the statute (R. 3), the union attorney taking the position that the state law was unconstitutional and that the federal court would so find (R. 44-45).

On June 23, 1951, the United States District Court remanded the cause to the Court of Law and Chancery of the City of Norfolk (R. 4-5).

On June 25, 1951, the Virginia Ferry Corporation requested the Norfolk City Court to issue an order to show cause why petitioners should not be punished for contempt (R. 2-4) and on the same day the order and rule to show cause issued (R. 5-6).

On June 27, 1951, the petitioners answered the motion for the show cause order and moved the court to vacate its injunction of May 17th (R. 7-8), contending that the order was null and void *ab initio* in seeking to compel compliance with a null and void, invalid and unconstitutional statute (R. 7). On the same day, and without notice to the counsel for petitioners (R. 14), an order was entered

transferring the case from the equity side of court to the law side and entitling it *Commonwealth . . .* v. *Local 333B, et al.* (R. 6-7).

On June 28, 1951, at the opening of the contempt hearing, counsel for the union again asked the court to vacate its order of May 17th on the ground that the order had no legal effect as being made pursuant to an unconstitutional statute (R. 11). The court, however, proceeded to try the contempt case and found the union and its officers guilty (R. 8-9). The court fined the union $7,500 (approximately twice its total assets (R. 73, 9)) and sentenced the two officers to 10- and 5-day jail sentences (R. 9), as well as fining them approximately two months' salary (R. 73, 74, 9).

On August 3, 1951, the three-judge United States District Court dismissed the complaint filed on June 19th on the ground that petitioners "have an altogether adequate remedy in the state courts." *Local 333B, United Marine Division* v. *Battle,* 101 F. Supp. 650, 652 (E. D. Va.). On November 26, 1951, this Court affirmed the judgment of the three-judge district court without argument or opinion. *Local 333B, United Marine Division* v. *Battle, Governor of Virginia,* 342 U. S. 880.

Meanwhile, petitioners appealed from the judgment of contempt entered in the Court of Law and Chancery of the City of Norfolk, assigning as error, among others, the failure of the court "to hold the injunctive order null and void *ab initio* as compelling compliance with null and void unconstitutional statute" (R. 10-11). On November 27, 1951, a writ of error and supersedeas was awarded petitioners (R. 1). On June 16, 1952, the Supreme Court of Appeals of Virginia affirmed the contempt conviction, without considering the validity of the Virginia statute or of the injunction, on the ground that where a court has jurisdiction of

the parties and the subject matter to pronounce a judgment, such judgment must be obeyed until reversed and cannot be attacked collaterally even if the statute upon which it is based is later declared to be unconstitutional (R. 87).[3]

Specifications of Errors to Be Urged

The Supreme Court of Appeals of Virginia erred:

(1) In failing to hold that the notice and waiting-period provisions of the Virginia Public Utilities Labor Act are unconstitutional and void as in conflict with the Labor-Management Relations Act, 1947.

(2) In failing to hold that the Labor-Management Relations Act, 1947, deprived the Virginia courts of jurisdiction to enjoin peaceful strikes in interstate industries.

(3) In holding that the validity of the Virginia statute and the injunction thereunder could not be raised upon appeal from the judgment of contempt for violating the injunction.

(4) In affirming the judgment and order of contempt.

The Writ Should Be Granted Because the Decision of the Supreme Court of Appeals of Virginia Denies Petitioners Their Rights Under Federal Law Without a Hearing and Conflicts With the Applicable Decisions of This Court.

(1) The decision of the Supreme Court of Appeals of Virginia boils down to this startling proposition: the injunction of a city court must be complied with as long as it

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[3] The court below suggested, although not relying upon the point, that petitioners had failed to move to vacate the injunction until they were before the court to answer the charge of criminal contempt (R. 87). This is incorrect. All apart from petitioners' efforts to have the issues determined in the more favorable atmosphere of the federal court first by removal (R. 2), and then by separate suit (*Local 333B, United Marine Division* v. *Battle, Governor of Virginia*, 342 U. S. 880), petitioners did move to vacate the injunction on June 27th (R. 7-8) and again on June 28th (R. 11), both prior to the trial for contempt.

is in effect even though it prohibits the exercise of the federally-protected right to strike and men may be fined and sent to jail for exercising those federally-protected rights without ever receiving a hearing on the existence of those rights.

(2) That petitioners did have such a federally-protected right to strike has been authoritatively declared by this Court and is no longer subject to question. *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383. Under these decisions, the right to strike is protected against efforts by a state to regulate (e. g., by notice and waiting-period requirements), or to prohibit, peaceful strikes in industries affecting commerce.

(3) Under the *O'Brien* and *Bus Employees* cases, it is clear that the notice and waiting-period provisions of the Virginia Public Utilities Labor Act conflict with the Labor Management Relations Act, 1947. Equally clear, state court action—by injunctive process or otherwise—cannot accomplish results forbidden to the state executive and the state legislature. *Shelley* v. *Kraemer*, 334 U. S. 1, 19-20; *W. U. Tel. Co.* v. *Massachusetts*, 125 U. S. 530. "The freedom from interference on the part of the States is not confined to a simple prohibition of laws impairing it, but extends to interference by any ultimate organ." *Kansas Southern Ry.* v. *Kaw Valley Dist.*, 233 U. S. 75, 78 (per Holmes, J.). The Virginia statute contained criminal sanctions and their attempted enforcement through prosecution would have given petitioners an opportunity to vindicate their federal rights. If, through the injunction-contempt route, state courts can prevent the assertion of the federally-protected right to strike, a new method has been found whereby state action can circumvent federal law.

(4) ". . . Congress has closed to state regulation the

field of peaceful strikes in industries affecting commerce." *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383, 394. In so doing, it has deprived the state courts of jurisdiction over peaceful strikes (*W. U. Tel. Co.* v. *Massachusetts,* 125 U. S. 530; *Kansas Southern Ry.* v. *Kaw Valley Dist.,* 233 U. S. 75, 78; *Shelley* v. *Kraemer,* 334 U. S. 1, 19-20) and state court action is void and subject to collateral attack.[4] *Kalb* v. *Feuerstein,* 308 U. S. 433; *Vallely* v. *Northern Fire Ins. Co.,* 254 U. S. 348. Even the court below conceded that the validity of the injunction could have been raised in the contempt proceeding if the state courts had not had jurisdiction of the subject-matter (R. 87-88) and this, of course, is a well-settled rule of law. *Freeman on Judgments,* 5th Ed., §§ 325, 337 (1925). By refusing to consider the federal constitutional issues presented to it, the court below closed its eyes to the very issue of "jurisdiction-over-the-subject-matter," on which, even by its own reasoning, the case turned.

(5) This Court implicitly accepted the view that the unconstitutionality of a state anti-strike injunction may be raised in contempt proceedings in *United Gas, Coke & Chemical Workers* v. *Wisconsin Board,* 340 U. S. 383 (reversal of fines for contempt for striking in violation of a state court restraining order). It is true, of course, that the Wisconsin Supreme Court did not rely on the collateral-attack doctrine, as did the court below here, but this Court would have been obliged to avoid the delicate federal-state

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[4] Although unnecessary to petitioners' case, it can be persuasively argued that defending a contempt action on the ground that the injunction is invalid is a direct rather than a collateral attack upon the injunction, particularly where the same judge issues the injunctive and contempt orders. The mere changing of the judge's hat from law to equity cannot obscure the practicalities of the situation. See Swayzee, *Contempt In Labor Injunction Cases* (1935) 25, n. 3; *Collateral Attack Upon Labor Injunctions Issued In Disregard of Anti-Injunction Statutes,* 47 Yale L. J. 1136, 1141, n. 29 (1938).

constitutional issues on this very ground had it believed that the Wisconsin state court injunction was not subject to attack on appeal from a contempt conviction. See also *Thomas* v. *Collins*, 323 U. S. 516.

(6) Neither *Howat* v. *Kansas*, 258 U. S. 181, nor *United States* v. *Mine Workers*, 330 U. S. 258, support the decision of the lower court. In the *Howat* case, there was no federal law protecting the right to strike and thus affecting the jurisdiction of the state courts. In the *Mine Workers* case, the basic question before the Court was the "power to issue a restraining order for the purpose of preserving existing conditions *pending a decision upon its own jurisdiction*"[5] (p. 290) and a majority of the Court upheld this power in reliance upon *United States* v. *Shipp*, 203 U. S. 563. The *permanent* injunction issued by the Virginia court cannot be justified on any such ground.

(7) There is no non-federal question adequate to sustain the decision of the court below. The jurisdiction of the city court issuing the injunction depends upon the interpretation of a federal statute (Labor-Management Relations Act, 1947) and is thus a federal question. *Kalb* v. *Feuerstein*, 308 U. S. 433, 438. Indeed, the court below apparently concedes that if federal law deprived the state courts of jurisdiction of the subject-matter, the injunction was void and subject to collateral attack (R. 87).

(8) Furthermore, state courts cannot close the door to any consideration of a claim of denial of federal right. *Young* v. *Ragen*, 337 U. S. 235, 238. If petitioners are not able to raise their claim of federal right in this Court at this time, they will be fined and imprisoned without ever having been able to present to the courts the claim of federal right so clearly laid down by the decisions of this Court. Indeed, petitioners sought to raise their claim of federal right by

[5] Italics supplied.

an injunction action in the federal court, but were rebuffed on the ground that they had an adequate remedy in the state courts. See *Local 333B, United Marine Division* v. *Battle*, 101 F. Supp. 650, 652 (E. D. Va.), affirmed 342 U. S. 880. Now they are told that there is no effective state court remedy either.

(9) As in strike situations generally, time was of the essence. See Frankfurter and Greene, *The Labor Injunction* (1930), 78-80, 201. Petitioners chose to exercise their federal right to strike rather than yield that right in deference to an injunction which their attorney assured them was unlawful (R. 44-45). In so doing, they took the risk that the courts might later uphold the injunction against their claim of federal right. But, if the lower court decision goes unreversed, they will have lost their federal rights without ever a day in court.

Conclusion

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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